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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,902	03/16/2001	Michael H. Myers	2807.2.22.3	6706

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EXAMINER

NGUYEN, DUNG X

ART UNIT PAPER NUMBER

2631

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/810,902

Applicant(s)

MYERS ET AL.

Examiner

Dung X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1- 12, and 14- 18 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objection

1. Claim 13 is objected to because of the following informalities: On line 6, "receive" should be changed to "to receive". Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. **Claims 1 – 12 and 14 - 18 are provisionally rejected** under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 12 and 14 - 18 of copending Application No. 09/810,912. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the instant application claimed invention is clearly encompassed by claim 1 of co-pending application # 09/810,912 as all limitations are included in the co-pending application. It would have been obvious to one of

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ordinary skill in the art to present the claim of this application as a broad version of the claim 1 of the co-pending application in order to minimize implementation cost. Note that the claims 2 – 12 and 14 – 18 are exact replica of the claims 2 – 12 and 14 – 18, respectively, of the co-pending application, respectively.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

4. **Claim 13 is objected** to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. **Claims 1 – 18 would be allowed** if a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Regarding to claim 1, the prior art of record fails to show or render obvious of an apparatus to synthesize modulation waveforms, comprising:

An error input line configured to carry an error signal;

A shift input line configure to carry a first shift signal;

An output line configured to carry a modulation waveform to a destination device;

An integration unit configured to receive and integrate the error signal, and to provide an integrated signal;

A summing unit configured to sum the first shift signal with the integrated error signal and provide a total shift signal; and

A waveform generator configured to receive a total shift signal and provide a modulation waveform characterized by a frequency proportional to the total shift signal.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent Documents:

Ohara et al. (US patent # 6,633,340 B1) discloses a video signal processor.

Bishop et al. (US patent # 6,377,782 B1) discloses a method and its corresponding apparatus for communicating between a client device and a linear broadband network.

Jones, III et al. (US patent # 6,278,301 B1) discloses a method and its corresponding apparatus for modulating the base frequency of a waveform generator.

Rostislavovich et al. (US patent # 6,208,286 B1) discloses microwave location device and its corresponding method for discovering the location of a living object.

Little et al. (US patent # 6,052,495) discloses resonator modulator and wavelength routing switches.

Dent (US patent # 5,867,537) discloses a balanced traversal I, Q filters for quadrature modulators.

Rapeli (US patent # 5,325,075) discloses a method and its corresponding circuit arrangement to generate a phase modulated or frequency modulated signals.

Other Publications:

Higuma et al., "Synthesis of Orthogonal Dual-Mode Optical BPSK Signals by a Monolithic LiNbO₃ Modulator", International Topical Meeting on Microwave Photonics, 2002. 5 – 8 November 2002, pp. 109 – 112.

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Lothar Möller, "Filter Synthesis for Broad-Band PMD Compensation in WDM Systems",
Photonics Technology Letters, IEEE, September 2000, vol. 12, issue 9, pp. 1258 – 1260.

Contact Information


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung X. Nguyen whose telephone number is (571) 272-3010. The examiner can normally be reached on Monday through Friday from 8:30 AM to 17:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Ghayour Mohammad H. can be reached on (571) 272-3021. The fax phone numbers for this group is (571) 273-3021.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

DXN

July 28, 2004


STEPHEN CHIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600